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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

In re:

HIDDEN GLEN, LLC

Debtor,

) Case No. 20-41767 CN

) Chapter 11

) UNITED CONSTRUCTORS INC'S
) OBJECTION TO MOTION FOR
) APPROVAL FOR USE OF CASH
) COLLATERAL

OBJECTION TO MOTION FOR APPROVAL OF USE OF CASH COLLATERAL

United Constructors Inc (“UCI”), secured creditor in the above referenced case, hereby objects to Hidden Glen, LLC’s (hereafter “Debtor”) motion for approval of use of cash collateral, including rents received from rental property at 3225 Clayton Road, Concord, California 94521 (“Property”).

FACTS

1. On November 9, 2020, the Debtor filed a voluntary petition for Chapter 11 bankruptcy.
2. The Debtor is currently operating as a debtor-in-possession.
3. The Debtor owns the Property, a completed duplex, as well as property located at 3223 Clayton Road, Concord, California 94521, an uncompleted duplex (“Uncompleted Property”).¹
4. The Property is being rented under a residential lease for \$6,190.
5. The Uncompleted Property is not generating income.
6. The Property has a current market value of \$1,350,000 and the Uncompleted Property has a current market value of \$1,250,000.
7. The Property and Uncompleted Property are encumbered by the following liens, in order of seniority –
 - a. Mechanic’s lien held by UCI in the amount of \$612,829.07²
 - b. LTV Private Equity (“LTV) in the amount of \$1,577.004 (deed of trust) with monthly payments of \$12,375
 - c. Real Estate Finance (“REF”) in the amount \$600,000 (deed of trust) with monthly payments of \$4,624
 - d. Lois Mowat (“Mowat”) in the amount of \$25,000 (deed of trust) with no monthly payments

¹ Unless otherwise stated, use of the term “properties” refers to the Property and the Uncomplete Property.

² The amount is UCI’s current best estimate of the claim; the amount listed is without prejudice to any proof of claim filed by UCI with respect to the properties. This is also the amount listed on Debtor’s schedule D.

1 8. In addition to the monthly payments to LTV and REF, the Debtor must pay property
2 taxes (\$940), insurance (\$85.90), and property management fees (\$280).

3 9. On or about June 9, 2020, UCI filed a complaint against the Debtor in Contra Costa
4 County Superior Court for, among other things, breach of contract and foreclosure of
5 mechanic's lien (\$612,829.07 plus interests and costs).

6 10. The Debtor filed a cross-complaint for \$1,065,000, as listed on schedule A/B.

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8 **ARGUMENT**

9 **CASH COLLATERAL SHOULD BE SEGREGATED FOR BENEFIT OF THE**
10 **SENIOR LIENSHOLDER PENDING OUTCOME OF STATE COURT LITIGATION**
11 **AND/OR TREATMENT IN PLAN**

12 11 U.S.C. § 363(c)(1) grants a debtor-in-possession the rights and powers of the Trustee
13 with respect to property of the estate. This includes the right to use property as permitted by
14 section 363. The debtor-in-possession, however, may not use, sell, or lease "cash collateral"
15 unless each entity with an interest in such collateral consents or the court authorizes such use
16 "after notice and hearing." 11 U.S.C. § 363(c)(1). UCI is the senior lienholder on both
17 properties and has pending litigation against the Debtor for breach of contract and foreclosure on
18 the mechanic's lien. As such, UCI has an interest in the use of the cash collateral.

19 The cash collateral from the rent of Property of \$6,190 should be segregated for the
20 benefit of UCI pending the outcome of the state court litigation and or treatment in the Chapter
21 11 plan. With the exception of the property taxes, insurance, and property management fees,
22 none of the junior lienholders should be paid from the cash collateral. Use of the cash collateral
23 to pay LTV and REF unduly prejudices UCI and would be inequitable under the circumstances.
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1 **First**, the Property and Uncompleted Property have no equity. Schedule A/B lists a
2 current market value of \$2,600,000 and liens totaling \$2,821,383.35. Absent further
3 information, the Debtor's ability to sell the property or refinance to pay all lienholders remains in
4 doubt (at least, in the foreseeable future). As a safeguard, the cash collateral should be
5 segregated until either resolution of the state court litigation or confirmation of a Chapter 11
6 plan. **Second**, the Uncompleted Property is still under construction. It is unclear when it will be
7 completed, how much will cost, when it will be rented, and how much income it will generate.
8 Given these uncertainties, the cash collateral should not be used to pay junior lienholders to the
9 detriment of UCI. **Third**, the Debtor is significantly cash flow negative. The contractual
10 payments – not including the obligations to UCI and Mowat -- total \$18,304.90 [LTV (\$12,375),
11 REF (\$4,624), property taxes (\$940), insurance (\$85.90), and property management fees (\$280)]
12 yet the rent is only \$6,190. The Uncompleted Property would need to be rented for \$12,114.90
13 (almost double the rent for the Property) to break even. Since it is unclear when the
14 Uncompleted Property will be finished and how much it will generate in rent, the current cash
15 collateral should be set aside until a plan of reorganization can be achieved that equitably treats
16 all lienholders. **Fourth**, UCI performed substantial work related to the properties and has
17 significant unreimbursed costs and expenses. UCI spent over \$1.9 million on the properties but
18 was paid less than \$700,000. In addition, UCI is facing collection activities because it is unable
19 to pay its creditors for loans it took out for development of the properties. And, **fifth**, the Debtor
20 can continue to operate the business without using the cash collateral to pay the junior
21 lienholders. Neither LTV nor REF offer services related to operation of the business. The Debtor
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1 can continue to rent the Property and seek financing, subject to court approval, to complete
2 construction of the Uncomplete Property while pursuing a plan of reorganization.

3 **CONCLUSION**

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5 Based on the foregoing, UCI respectfully opposes the Debtor's Motion for Approval of
6 Use of Cash Collateral.

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9 Dated: December 31, 2020

Jen Lee Law, Inc.

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11 /s/ Leo G. Spanos
12 Attorney for UCI
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